

12-20-07

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PTO/SB/17p (10-07)

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PETITION FEE
Under 37 CFR 1.17(f), (g) & (h)
TRANSMITTAL

(Fees are subject to annual revision)

Send completed form to: Commissioner for Patents
P.O. Box 1450, Alexandria, VA 22313-1450

Application Number	09/772,278
Filing Date	March 15, 2001
First Named Inventor	Robert SKVORECZ
Art Unit	3632
Examiner Name	
Attorney Docket Number	MM4336

Enclosed is a petition filed under 37CFR 1.198 that requires a processing fee (37 CFR 1.17(f), (g), or (h)). Payment of \$ is enclosed.

This form should be included with the above-mentioned petition and faxed or mailed to the Office using the appropriate Mail Stop (e.g., Mail Stop Petition), if applicable. For transmittal of processing fees under 37 CFR 1.17(i), see form PTO/SB/17i.

Payment of Fees (small entity amounts are NOT available for petition fees)☒ The Commissioner is hereby authorized to charge the following fees to Deposit Account No. 503814 :☒ petition fee under 37 CFR 1.17(f), (g) or (h) ☒ any deficiency of fees and credit of any overpayments

Enclose a duplicative copy of this form for fee processing.

☐ Check in the amount of \$ is enclosed.☐ Payment by credit card (Form PTO-2038 or equivalent enclosed). Do not provide credit card information on this form.**Petition Fees under 37 CFR 1.17(f): Fee \$400 Fee Code 1462**

For petitions filed under:

§ 1.36(a) - for revocation of a power of attorney by fewer than all applicants.

§ 1.53(e) - to accord a filing date.

§ 1.57(a) - to accord a filing date.

§ 1.182 - for decision on a question not specifically provided for.

§ 1.183 - to suspend the rules.

§ 1.378(e) - for reconsideration of decision on petition refusing to accept delayed payment of maintenance fee in an expired patent.

§ 1.741(b) - to accord a filing date to an application under § 1.740 for extension of a patent term.

Petition Fees under 37 CFR 1.17(g): Fee \$200 Fee Code 1463

For petitions filed under:

§ 1.12 - for access to an assignment record.

§ 1.14 - for access to an application.

§ 1.47 - for filing by other than all the inventors or a person not the inventor.

§ 1.59 - for expungement of information.

§ 1.103(a) - to suspend action in an application.

§ 1.136(b) - for review of a request for extension of time when the provisions of section 1.136(a) are not available.

§ 1.295 - for review of refusal to publish a statutory invention registration.

§ 1.296 - to withdraw a request for publication of a statutory invention registration filed on or after the date the notice of intent to publish issued.

§ 1.377 - for review of decision refusing to accept and record payment of a maintenance fee filed prior to expiration of a patent.

§ 1.550(c) - for patent owner requests for extension of time in ex parte reexamination proceedings.§ 1.956 - for patent owner requests for extension of time in inter partes reexamination proceedings.

§ 5.12 - for expedited handling of a foreign filing license.

§ 5.15 - for changing the scope of a license.

§ 5.25 - for retroactive license.

Petition Fees under 37 CFR 1.17(h): Fee \$130 Fee Code 1464

For petitions filed under:

§ 1.19(g) - to request documents in a form other than that provided in this part.

§ 1.84 - for accepting color drawings or photographs.

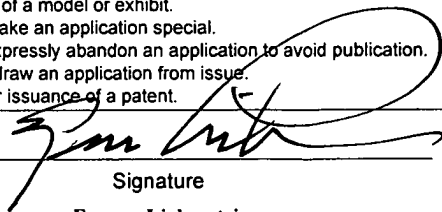
§ 1.91 - for entry of a model or exhibit.

§ 1.102(d) - to make an application special.

§ 1.138(c) - to expressly abandon an application to avoid publication.

§ 1.313 - to withdraw an application from issue.

§ 1.314 - to defer issuance of a patent.


Signature
Eugene Lieberstein

Typed or printed name

December 19, 2007

Date

24,645

Registration No., if applicable

This collection of information is required by 37 CFR 1.17. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 5 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U. S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of

Robert SKVORECZ

Reissue of U. S. Patent: 5,996,948

Appeal No: 2006-1989

SERIAL NO. : 09/772,278

FILED : March 15, 2001

FOR : WIRE CHAFING STAND

**PETITION UNDER 37 CFR 1.198 AND MPEP 1214.07(B) TO REOPEN
PROSECUTION**

Director of Technology Center
UNITED STATES PATENT AND TRADEMARK OFFICE
P. O. Box 1450
Alexandria, VA 22313-1450

SIR:

All necessary fees in connection with this petition should be deducted from
Deposit Account No. 503814.

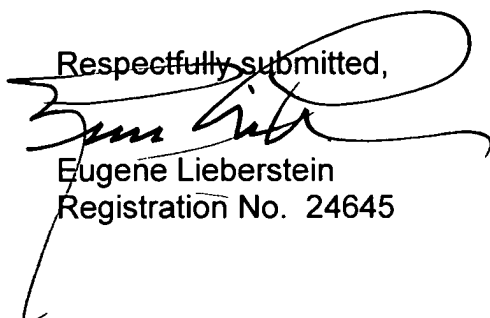
This is a petition to the Director of the USPTO under 37 CFR 1.198 following a final decision of the Board of Patent Appeals dated November 19, 2007 to reopen or to reconsider prosecution under 37 CFR 41.50(b)(1) so that Appellant may present new evidence to challenge an allegation of inherency raised by the Board in affirming the final rejection while erroneously failing to treat said allegation as a new ground of rejection. The Board held that "the prima facie case can be rebutted by evidence showing that the prior art products do not necessarily possess the characteristics of the claimed product". The Examiner never raised the issue of inherency during prosecution as a basis for rejecting claims 1 and 2 as anticipated by the cited reference and never alleged or suggested that Appellant could overcome the rejection by "showing that the prior art products do not necessarily possess the

characteristics of the claimed product” as recited in the functional language limitations in claims 1 and 2. This allegation was raised for the first time by the Board in the Decision On Appeal dated March 28, 2007. However, since the Board did not treat the allegation of inherency as a new basis for rejection, Appellant requested reconsideration to provide Appellant with the opportunity to present new evidence, not of record, to rebut this allegation. In its final decision, the Board considered the request by Appellant for reconsideration a selection by Appellant to proceed under 37 CFR 41.50(b)(2) and foreclosed Appellant from reopening prosecution under 37 CFR 41.50(b)(1).

The Board Decision On Appeal dated March 28, 2007 affirming the final rejection of the Examiner under 35 USC 102 was based upon an allegation that the cited prior art reference, Buff et al, inherently possessed all of the functional language limitations in claims 1 and 2. The Board stated that this allegation could be rebutted with new evidence. No indication was given by the Board in its Decision as to how such new evidence could be introduced, nor was the allegation of inherency treated as a new basis for rejection. Several new grounds of rejection were raised by the Board under the heading “New Grounds of Rejection” in a section of the Decision On Appeal totally independent of the anticipation rejection and without any reference to the allegation of inherency. Appellant was never granted an opportunity to present new evidence on the issue of inherency of the functional limitations of the claims since this was never raised during prosecution and no evidence of any kind was ever made of record. In fact, the Examiner alleged in the EXAMINER’S ANSWER that the functional language limitations in claims 1 and 2 have no patentable weight and gave them no consideration in the final rejection. The Board instead alleges that the functional language limitations in claims 1 and 2 are inherently possessed by the prior art reference which is clearly a new basis for rejection inconsistent with the Examiner’s refusal to consider the functional language limitations as integral limitation of the claims. The new evidence which Appellant wishes to make of record is a commercially available model of the prior art structure described in Buff et al., which presently exists and will substantiate that the prior art does not inherently possess all of the functional language limitations in claims 1 and 2 as alleged by the Board and would therefore render the claims allowable.

In conclusion, Appellant requests the Director of the USPTO to reopen prosecution under MPEP 1214.07(B) to provide Appellant with an opportunity to rebut this new ground of rejection based upon offering new evidence.

Respectfully submitted,



Eugene Lieberstein
Registration No. 24645


Dated: December 19, 2007
CUSTOMER NO. 01109

CERTIFICATE OF E-FILING

Date of Deposit: December 19, 2007

I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR § 1. 10 on the date indicated above and is addressed to: Director of Technology Center, United States Patent and Trademark Office, P. O. Box 1450, Alexandria, VA 22313-1450 on **December 19, 2007**

Maggie McGarry (Typed or printed name of person mailing paper or fee)

 (Signature of person mailing paper or fee)